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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1892.

No. 10 (Original).

EX PARTE: IN THE MATTER OF WILLIAM DOUGLASS CROSS, PETITIONER.

PETITION FOR WRITS OF HABEAS CORPUS AND CERTIORARI.

CHARLES MAURICE SMITH,
JOSEPH SHILLINGTON,
Attorneys for Petitioner.

1 In the Supreme Court of the United States.

October Term, 1892.

IN THE MATTER OF THE APPLICATION OF William Douglass Cross for writs of habeas corpus and certiorari. } No. 10. Original.

Petition for writs.

To the Supreme Court of the United States:

The petitioner, William Douglass Cross, a citizen of the United States, and a resident of the District of Columbia, respectfully shows, that he is unlawfully deprived of his liberty, and unlawfully imprisoned, confined, and detained in the United States jail, in the county of Washington and District of Columbia, by Jerome B. Burke, the warden of the said jail, and asks that he be discharged and set at liberty.

That the said imprisonment, detention, confinement, and restraint are illegal; and that the illegality thereof consists in this, to wit:

1. On the 7th day of July, 1891, at a special term of the supreme court of the District of Columbia, holding a court for criminal business, this petitioner was, by a verdict of a jury, convicted of murder.

2. That thereafter he filed a motion for a new trial, which was heard and overruled, and on, to wit, the 30th day of July, 1891, judgment and sentence were pronounced against him by the justice presiding, holding said special term for criminal business, in the following words:

2 "It is considered that for his said offense the defendant be taken by the warden aforesaid to the jail from whence he came, and there to be kept in close confinement, and that upon Friday, the 22d day of January, in the year of our Lord one thousand eight hundred and ninety-two, he be taken to the place prepared for his execution, within the walls of the said jail, and that there, between the hours of eight o'clock ante-meridian and twelve o'clock meridian of the same day, he be hanged by the neck until he be dead, and may God have mercy upon his soul."

3. Petitioner further says, as he is informed by his counsel and verily believes, that an appeal was taken from said special term to the general term of the supreme court of the District of Columbia, and on January 12th, 1882, said supreme court in general term affirmed the judgment of the special term in the following words:

"Because it appears to the court here that there is no error in the record and proceedings, or in the judgment of the special term in this cause, it is considered by the court here that the said judgment be, and the same hereby is, affirmed."

4. Petitioner further states, as he is informed by his counsel and verily believes, that a death warrant was, on the 12th day of January, 1892, issued for his execution to take place on the 22d day of January, 1892, and that no return of said warrant has ever been made.

5. Petitioner further says that, as he is informed by his counsel and verily believes, while he was in jail awaiting execution, the chief justice of the supreme court of the District of Columbia allowed a writ

3 of error to the Supreme Court of the United States.

6. Petitioner further states, as he is informed by his counsel and verily believes, that on 21st day of January, 1892, the supreme court of the District of Columbia in general term, in the absence of the petitioner, postponed the day of his execution as fixed by the presiding justice in the special term, and in his absence resentenced him to be hanged on Friday, the 10th day of June, 1892, between the same hours specified in the said judgment of the said special term.

7. Petitioner further says, as he is informed by his counsel and verily believes, that on the 16th day of May, 1892, the Supreme Court of the United States refused to entertain the writ of error and dismissed the same, holding that the act of February 6th, 1889, did not authorize the issue of the writ, as will more fully appear on reference to the opinion of said court, a copy of which is hereunto annexed marked "A," and forms a part of this petition.

8. Petitioner further says, as he is informed by his counsel and verily believes, that from the day upon which sentence was pronounced by the presiding justice, to wit, July 30, 1891, until the day fixed for his execution, to wit, January 22nd, 1892, the warden of the United States jail held and detained him as a prisoner under and by virtue of the said sentence.

9. Petitioner further says, as he is informed by his counsel and verily believes, that after the day fixed for his execution, to wit, January 22nd, 1892, said warden has claimed the right to hold and detain this petitioner as a prisoner under and by virtue of an order of the supreme court
4 of the District of Columbia, in general term, postponing his execution and resentencing him to be hanged June 10th, 1892, in the following words:

"That the execution of the sentence of death pronounced against the defendant by the special term of this court on the thirtieth day of July, in the year of our Lord one thousand eight hundred and ninety-one, to take place on the twenty-second day of January, 1892, be, and the same is hereby, postponed until the tenth day of June, 1892, between the same hours specified in the said judgment of the said special term."

10. Your petitioner further avers, as he is informed by his counsel and verily believes, that section 1040, Revised Statutes U. S., under which the court in general term postponed the execution of the sentence, provides for cases carried to the Supreme Court of the United States, and directs what shall be done in such cases by the court rendering the judgment. It is provided that in case of affirmance the court rendering the judgment shall appoint a day for execution. All this is in cases which are carried to the Supreme Court in pursuance of law. The case of your petitioner has been decided not to have been so carried to the Supreme Court. The result, in contemplation of law, is that it never was in that court. Consequently the case not being such as is contemplated by said section 1040, the supreme court of the District of Columbia was without authority to change the date of execution. As the date lawfully fixed, to wit, January 22nd, 1892, has passed, and a new date was not lawfully fixed, and no other date can be fixed, your petitioner is advised that he is detained and imprisioned without authority of law.

5 11. Petitioner further says, as he is informed by his counsel and veryily believes, that since the dismissal of the writ of error by the

Supreme Court of the United States on the 16th day of May, 1892, and the opinion of that court declaring that the allowance of said writ of error was ultra vires, without jurisdiction and null and void; and, as a necessary consequence, that the order of the supreme court of the District of Columbia in general term postponing the execution of this petitioner and resentencing him to be hanged at a later day was also ultra vires, without jurisdiction, and null and void; that said warden has, since said decision, unlawfully detained and held this petitioner as a prisoner without any lawful warrant, and still so unlawfully detains and hold him.

12. Petitioner further says, as he is informed by his counsel and verily believes, that on the 7th day of June, 1892, the supreme court of the District of Columbia, in special term and without any authority of law, or power or jurisdiction therein, postponed the execution of this petitioner to the 11th day of November, 1892, between the same hours heretofore specified.

13. Petitioner further says, as he is informed by his counsel and very believes, that on the 9th day of November, 1892, the supreme court of the District of Columbia, in special term and without any authority of law, or power or jurisdiction therein, again postponed the execution of this petitioner to the 2nd day of December, 1892, between the hours heretofore specified.

14. Petitioner further says, as he is informed by his counsel
6 and verily believes, that there was no power, jurisdiction or authority vested in any court to resentence this petitioner, to postpone said sentence, or to fix another day for his execution beyond the 30th day of January, 1892, and that any and all postponements of the execution of the petitioner after the said 30th day of January, 1892, was null and void, and in violation of section 845 of the Revised Statutes of the United States relating to the District of Columbia, which said section governs the time of execution within the District of Columbia in all cases of appeal.

15. Petitioner further says, as he is informed by his counsel and verily believes, that the authority of the warden of the United States jail to detain him as a prisoner expired January 22, 1892, and that since that day said warden has unlawfully kept and detained this petitioner as a prisoner without due process of law, and in violation of the Constitution of the United States.

Petitioner further says to this honorable court that he is very poor, has no money, property, or estate of any kind whatever, and no credit or friends able to help him; and he therefore prays that he may be permitted to prosecute these writs herein *in forma pauperis*, without paying costs, or giving security therefor, and that such orders may be made herein as to this court may seem proper and just.

Wherefore your petitioner prays that a writ of *habeas corpus* issue to Jerome B. Burke, the warden of the United States jail in the District of Columbia, commanding him to produce the body of this petitioner in court forthwith, together with the cause of his detention as a prisoner by said warden, and that petitioner may be discharged and set at lib-
7 erty; and he furthermore prays that a writ of certiorari may issue to John R. Young, clerk of the supreme court of the District of Columbia, commanding him to certify to this court all the proceedings of

record of the United States against William Douglass Cross in that court, to the end that the errors therein as set forth in this petition may be fully corrected by this court.

his
WILLIAM X DOUGLASS CROSS.
mark

Witness:
WM. WARD MOHUN.

DISTRICT OF COLUMBIA, *ss:*

William Douglass Cross, being first duly sworn, deposes and says:

That he is the petitioner named in the foregoing petition by him subscribed; that he has heard read the same and knows the contents thereof and that the facts therein stated of his own knowledge are true, and those stated upon information and belief he believes to be true.

his
WILLIAM X DOUGLASS CROSS.
mark.

Sworn and subscribed to before me this 28th day of November, A. D. 1892.

[SEAL.] WM. WARD MOHUN,
Notary Public, D. C.

CHARLES MAURICE SMITH
JOSEPH SHILLINGTON
Counsel for Petitioner.

(Here follows Exhibit A. Opinion of Sup. Court U. S. in case of Cross v. U. S., 145 U. S., 571, omitted in printing this petition by direction of the Chief Justice.)

(Indorsed on cover:) Supreme Court of the United States. In the matter of the application of William Douglass Cross for writs of habeas corpus and certiorari. Petition. Chas. Maurice Smith, Joseph Shillington, attorneys for petitioner.

In the

Supreme Court of the [illegible]

In the Matter of the Application of [illegible]
Douglass Cross, for Writs of Habeas Corpus
and Certiorari.

POINTS.

CHAS. MAURICE SMITH,
JOSEPH GUILLEMETTE,
Attorneys for Petitioner.

Office Supreme Court U. S.
FILED.
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JAMES H. McKENNEY,
CLERK.

IN THE

Supreme Court of the United States

In the Matter of the Application of Willliam Douglass Cross, for Writs of Habeas Corpus and Certiorari.

POINTS.

CHAS. MAURICE SMITH,
JOSEPH SHILLINGTON,
Counsel for Petitioner.

Law Reporter Print. 518 5th.

IN THE

Supreme Court of the United States.

IN THE MATTER OF THE APPLICATION OF WILLIAM DOUGLASS CROSS FOR WRITS OF HABEUS CORPUS AND CERTIORARI.

POINTS.

The petitioner, through his counsel, desires to submit to this honorable court the following points and decisions as to the rights, the power, and the authority of this court to issue these writs of habeas corpus and certiorari.

In Ex parte Lange, 85 U. S., 163, Mr. Justice Miller, in delivering the opinion of the court as to its power to direct the writ of habeas corpus to issue, accompanied also by a writ of certiorari, said:

> "The authority of this court in such case, under the Constitution of the United States, and the fourteenth section of the Judiciary Act of 1789, 1 Stat. at L., 73, to issue this writ and examine the proceedings in the inferior court, so far as may be necessary to ascertain whether that court has exceeded its authority, is no longer open to question.

The cases cited in the note below,

U. S. *vs.* Hamilton, 3 Dall., 17.
Ex parte Burford, 3 Cranch, 448.
" " Bollman, 4 Cranch, 75.
" " Watkins, 3 Pet., 193.
" " Metzger, 5 How., 176.
" " Kaine, 14 How., 176.
" " Wells, 18 How., 307.
" " Milligan, 4 Wall., 2.
" " McCardle, 6 Wall., 318.
" " Yerger, 8 Wall., 85,

will, when examined, establish this proposition as far as judicial decision can establish it."

In Ex parte Virginia, 100 U. S., 339, Mr. Justice Strong, in delivering the opinion of the court, said:

> "While, therefore, it is true that a writ of habeas corpus cannot generally be made to subserve the purposes of a writ of error, yet when a prisoner is held without any lawful authority, and by an order beyond the jurisdiction of an inferior Federal Court to make, this court will, in favor of liberty, grant the writ, not to review the whole case, but to examine the authority of the court below to act at all."

And in this same case as in many others cited, the case of Ex parte Lange was referred to and approved.

In the following cases likewise, the opinion of the court in the Lange Case was approved and the writs of habeas corpus and certiorari were allowed to issue.

Ex parte Rowland, 104 U. S., 604.
Roberts *vs.* Reilly, 116 U. S., 85.
Ex parte Snow, 120 U. S., 274.
Ex parte Bain, 121 U. S., 1.
Ex parte Ayers, 123 U. S., 486.

Counsel for petitioner further say that the order of the General Term of the Supreme Court of the District of Columbia made in this case postponing the execution of the sentence of petitioner to June 10, 1892, was contrary to the provisions of section 845, R. S. of the District of Columbia, and was null and void, and that all subsequent orders made by such Court subsequent thereto are likewise null and void, and counsel thereupon ask that such writ of habeas corpus may issue and that it may be accompanied by a writ of certiorari in order that the illegal action of the Supreme Court of the District of Columbia may be clearly shown to your honorable court.

CHAS. MAURICE SMITH,
JOSEPH SHILLINGTON,
Counsel for Petitioner.